



POLICE DEPARTMENT

December 18, 2008

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Steven Irizarry
Tax Registry No. 935045
52 Precinct
Disciplinary Case No. 83896/08

The above-named member of the Department appeared before me on October 6, 2008, charged with the following:

1. Said Police Officer Steven Irizarry, assigned to the 52nd Precinct, on or about December 16, 2006, at or about 0400 hours, while on duty, in the vicinity of Cedar Avenue and Landing Road, Bronx County, wrongfully engaged in using force against an individual known to this Department, in that he wrongfully struck said individual in the face without proper police necessity.

P.G. 203-11, Page 1, Paragraph 2 - FORCE

The Department was represented by Mary Lynne Frey, Esq., Department Advocate's Office, and the Respondent was represented by Craig Hayes, Esq.

The Respondent, through his counsel, entered a plea of Guilty to the subject charges and testified in mitigation of the penalty. A stenographic transcript of the mitigation record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent, having pleaded Guilty, is found Guilty as charged.

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SUMMARY OF EVIDENCE IN MITIGATION

The Respondent has been a member of this Department for four and a half years. Prior to being appointed as a Police Officer, he was a Police Cadet and a college student. He was assigned to the 52 Precinct upon graduation from the Police Academy and currently performs patrol duties there. The Respondent said that he has made approximately 40 arrests and has assisted in over one hundred.

On December 16, 2006, at about 4:00 a.m., the Respondent was on duty and working with Police Officer Deyoung. At that time, he received a radio run for graffiti at Cedar Avenue and Landing Road (The Bronx). He explained that as he was en route to the assignment, a call came in for a fight at the same location. The Respondent testified that near this intersection, there was a nightclub he was "familiar with" called the X Bar. He said the club "has a history of violence and shootings, stabbings, people getting hit by cars [,] police officers getting attacked." Many of these incidents happened when the club was closing.

Upon arriving on the scene, the Respondent said that he "saw the sergeant and the operator of the car getting crowded by several people like trying to break up people from fighting." There were fights going on outside of the nightclub and individuals were fighting each other. The Respondent said that he, Deyoung, Police Officer Kurek and Sergeant Valdez were present at the scene. No other members of the service were present.

The Respondent testified that he began to disperse the crowd with his partner. He said that while in the process of dispersing the crowd, some arrests were made. Specifically, he said, "The first arrest was when the crowd disbursed. A guy took a swing at" Deyoung, striking him in the face, and another two arrests "were made moments after that." This individual was handcuffed and placed into a police car by Deyoung and Kurek. Two other arrests were also

made “moments later” by other officers. The Respondent stated that he was not involved in handling the arrests.

The Respondent described the scene. He said it was “[a]bout 400 or 500 people . . . [t]wo city blocks” in size. He likened the situation to a “melee.” After the first individual was placed under arrest and secured in the patrol car, the Respondent explained that a large, disorderly crowd formed along the patrol car while cursing and yelling at the officers present. The Respondent said, “I felt somebody close to me. I instantly put my arm out of the car and struck a guy, not intentionally. Not on purpose.” This person’s name was Jonathan Sanchez. The Respondent struck Sanchez once in the face, and admitted that it was not appropriate to do so. The Respondent testified, “I am sorry for doing that, adding, “I feel bad and upset about that I didn’t mean to do it.” He explained his rationale, saying, “I felt somebody close to me. I didn’t want to get attacked.”

Sanchez was “toward the back” of the Respondent. When the Respondent struck Sanchez, the Respondent turned toward his left. The Respondent struck Sanchez with his right hand. He believed it was an open-handed strike, with the front of his hand. The Respondent admitted that Sanchez did not raise his hand to hit the Respondent, nor did he have any weapon. The Respondent admitted that Sanchez was not a threat to him at the time he struck him.

Sanchez was not arrested. The Respondent never saw him speak to the sergeant, but did hear him. Sanchez was not hospitalized, nor did he sustain any “serious injuries.”

On cross-examination, the Respondent acknowledged that he struck Sanchez because of “a reaction” and that it was not an appropriate reaction. At the time, the Respondent said, he did not feel as if he had any other options and struck Sanchez out of fear of his safety. It was not done deliberately or out of anger.

After striking Sanchez, the Respondent said, he got into the police car and left and no further police action was taken.

Upon re-direct examination, the Respondent testified that while he “decide[d] to strike” Sanchez, he did not “intend” to strike him. The Respondent did not “feel that it was an appropriate police action.”

Upon examination by the Court, the Respondent stated that Sanchez was a little taller than the Respondent and was about “an arm length” away from him, and was heavier than him.

PENALTY

In order to determine an appropriate penalty, the Respondent’s service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974). The Respondent was appointed to the Department on July 1, 2004. Information from his personnel folder that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Respondent has been found Guilty, after pleading Guilty and testifying in mitigation of the penalty, of wrongfully striking a civilian in the face. The Department argued that a penalty of ten vacation days should be imposed.

The Respondent testified that he responded with other officers to “a melee type of situation” that had developed on the street when a club was closing. After one individual was placed under arrest for striking the Respondent’s partner, Police Officer Deyoung, in the face, an angry crowd formed near the RMP, yelling and cursing at the officers. The Respondent testified that he sensed an individual, later identified as Jonathan Sanchez, “close” to him. The Respondent “instantly” put his right arm out, turned toward his left, and struck Sanchez with, he believed, an open hand. The Respondent agreed that this action was inappropriate, but said he

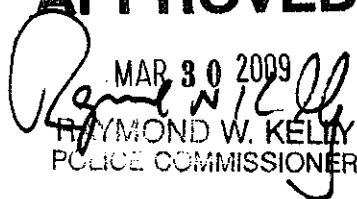
had not done it “on purpose.” He “decided” to strike Sanchez, but insisted this was not “intentional.” Rather, he did so as a “reaction” while in fear for his safety.

The Court recommends a penalty of five vacation days. As the Respondent contritely admitted, his action of striking Sanchez was wrong. A member of this Department cannot succumb to those tensions and frustrations which are the normal components of his duties. Nonetheless, the incident occurred in the midst of a chaotic, angry crowd. The Respondent had just witnessed his partner being struck in the face by another individual from the crowd. The Respondent’s testimony showed that he acted instinctively, but not out of malice. In light of his service record and remorseful testimony, the Court recommends a five-day penalty for the Respondent. See, e.g., Disciplinary Case No. 80623/05 (ten-year Sergeant with no record testified in mitigation that he shoved a hospital employee at the psychiatric ward out of frustration, while handling a case of a disturbed child; the matter was returned to the Sergeant’s command for the imposition of an “A” Command Discipline and penalty of five vacation days).

Respectfully submitted,



David S. Weisel
Assistant Deputy Commissioner – Trials

APPROVED
MAR 30 2009

RAYMOND W. KELLY
POLICE COMMISSIONER